

NEW HAMPSHIRE LAW LIBRARY

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SEP 03 1998

May 11

CONCORD, N.H.

The Honorable Hugh Gregg  
Governor of New Hampshire  
Concord, New Hampshire

Dear Governor:

While at first glance the appropriation from the general funds of the City of Manchester not to exceed \$2000. provided by House Bill 43 for purposes of a study by a Home Rule commission would appear to exceed legislative authority to deal with municipal funds, a cursory examination of the authorities indicates the contrary. Therefore, it would appear that this bill is not unconstitutional.

The power of the Legislature to control even revenue which has been raised by a municipality is well settled. A municipality has no vested right in or to its public funds such as to preclude legislative interference, and public monies in the custody of municipalities are subject to disposition by the Legislature for governmental purposes within the limitations of the Constitution. McQuillan, Municipal Corporations, Vol. II, s. 4.140. In fact, it has been held that the due process clause of the 14th Amendment of the United States Constitution does not limit the power of state legislatures to compel expenditure of money by municipal corporations for a public purpose beneficial to the municipality and in which the general public has an interest. McQuillan, supra, s. 4.159. I do not believe that it could be successfully maintained that the purpose of House Bill 43 is not public.

While the exact point does not appear to have been passed on by our Supreme Court, it has been stated by the Court that "Towns are but subdivisions of the state, given certain governmental powers and charged with some local governmental duties. Any part or all of the local duties and obligations may be assumed by the state." Opinion of the Justices, 84 N.H. 559, 578. See, Arnot v. Caron, 83 N.H. 394. In the Arnot case, the Court pointed



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out several examples of special legislation relating to the finances of the City of Manchester, and the Court in speaking of these said in part, at page 401:

"The state's interest in the city's welfare does not free the city from chargeability for the expense of the benefit of the state's action taken to secure the benefit . . . ."

If it is desired that House Bill 48 be phrased permissively rather than in mandatory language, it might be best to have the last legislative body acting upon the measure agree to recall it before 2:00 o'clock tomorrow afternoon for purposes of appropriate amendment but if this is not possible then of course a veto would kill the measure. It is not for me to say which policy is preferable but if the Legislature believes that the local officials would not appropriate, then either mandatory language of the type used or an appropriation from the general funds of the state seems unavoidable.

Respectfully,

Louis C. Wynan  
Attorney General

W/a



C O P Y

Honorable Harry H. Foote -- 2.

other than a defined basis of valuation which the Commission is required to apply equally and with a uniform rate therefor.

With every good wish.

Sincerely,

Louis C. Wyman  
Attorney General

w/d